

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

G.W. Heineke and Company
956 East Main Street
El Centro, California 92243

ID. No. CAD 000 020 768

Respondent

Docket HWCA 01/02-4006

STIPULATION AND ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and G.W. Heineke and Company (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the Enforcement Order issued by the Department on January 15, 2003.
2. The parties wish to avoid the expense of further litigation and to ensure prompt action to achieve the Schedule for Compliance below.
3. Jurisdiction exists pursuant to Health and Safety Code section 25187.
4. Respondent waives any right to a hearing in this matter.
5. This Order shall constitute full settlement of the violations alleged in the Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.
- 6.0. Schedule for Compliance:
 - a. Respondent agrees to send two employees, of Respondent's choice, to the California Compliance School, modules I through IV. Attendance must be completed

and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the date of this Order. If Respondent fails to submit the Certificates, as required, a stayed penalty of \$5,000 becomes due and payable within 30 days after the expiration of the 185-day period. This 185-day period may be extended by the Department upon written request from the Respondent demonstrating good cause.

b. Respondent agrees to cease using the material that gave rise to the Enforcement Order, and to properly handle the waste generated by the operation.

6.1 Submittals: All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Nennet V. Alvarez, Branch Chief
Statewide Compliance Division
Cypress Office
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Ramon B. Perez
Senior Staff Counsel
2078 Camino Del Rio South
San Diego, California 92108

6.2. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

6.3. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order

fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

6.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

6.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

6.6. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order.

Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

6.7. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency

having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

6.8. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 8.2 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

6.9. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

6.10. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

6.11. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

7. Within 30 days of the effective date of this Order, Respondent shall pay the Department a total of \$5,000.00, as reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket Number as shown in the heading of this Order. Respondent shall deliver the payment together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Nennet V. Alvarez, Branch Chief
Statewide Compliance Division
Cypress Office
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

8. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order.

8.1. Penalties for Noncompliance: Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs

incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

8.2. Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

8.3. Effective Date: The effective date of this Order is the date it is signed by the Department.

Dated: 9 - 24 - 2003

Original signed by Gary Heineke

Gary W. Heineke
G.W. Heineke and Company
Respondent

Dated: 9 - 30 - 2003

Original signed by Nennet V. Alvarez

Nennet V. Alvarez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control